

THE EFFECTIVE DATE OF THIS ORDINANCE IS JUNE 26, 2007

ORDINANCE NO. 07-22-462

OPINION, FINDINGS AND ORDINANCE
OF
THE BOARD OF COUNTY COMMISSIONERS
OF
FREDERICK COUNTY, MARYLAND

RE: APPLICATION OF ST. JOHN PROPERTIES, INC.

REZONING CASE NO. R-06-06

OPINIONS/FINDINGS

St. John Properties, Inc. filed this application to rezone 5.6995 acres, more or less, from the Planned Unit Development (PUD) zoning district to the Limited Industrial (LI) zoning district. The property is located on the west side of MD Route 85, one-quarter of a mile south of Executive Way, in the Adamstown Planning Region, all as more fully described in the record.

The requested rezoning is based on a mistake in the existing PUD zoning classification. The applicant asserts that a mistake was made when the Comprehensive Zoning Map was adopted on October 2, 2001 during the Adamstown Region Plan update indicating the zoning of the parcel in question as PUD rather than LI.

The original Russell property, of which this proposed zoning map amendment is a part, has an extensive rezoning history. The original property, approximately 140 acres in size, was zoned Agriculture on the 1959 Frederick

County Zoning Map. In 1970 the property was rezoned to Residential Mobile Home District. In 1972, the property was rezoned to PUD.

In 1988, an approved piecemeal rezoning (Case No. R-88-31) rezoned the majority of the property, including the subject site, to the Office/Research/Industrial (ORI) zoning district. The Frederick County Zoning Map, as revised in 1989, correctly depicted this rezoning.

A condition of this rezoning was that the applicant give approximately 5.8 acres of land to the adjoining Countryside PUD Homeowner's Association (HOA) to serve as a buffer between the PUD and the rezoned ORI Russell property.

An addition plat for the 5.8 acre addition to the Countryside PUD (Plat No. 40-183) was approved, signed and recorded on May 9, 1989. For unknown reasons, however, the addition of the 5.8 acres to the Countryside PUD was not reflected as a new parcel on the Maryland State Department of Assessments and Taxation (SDAT) records from which the County historically used as a base for the Frederick County Zoning Map. From this point on, it appears that an assumption was made that the SDAT records were correct, when in fact the SDAT records (and subsequent maps derived therefrom) do not reflect the addition of 5.8 acres to the Countryside PUD resulting from Addition Plat No. 40-183.

As a result, when the Frederick County Zoning Map was amended by the comprehensive rezoning which occurred during the 1991 Adamstown Region Plan process, an error occurred. It appears that, based on the SDAT records (which did not reflect addition Plat No. 40-183), the line demarcating the Countryside PUD

from the Russell property was inadvertently placed beyond the PUD boundary (created by the HOA parcel) to a boundary line of Parcel 100 of the Russell property. This resulted in the Zoning Map showing PUD zoning on a portion of the Russell property which previously was accurately reflected as being zoned ORI.

Nearly a decade later, the owners of the Russell property submitted an individual property owner request for rezoning during the 2001 Adamstown Region Plan update process. The written request (Case No. AD-99-19) was to rezone the entire remaining parcel of 104.421 acres (less the 5.8 acre HOA parcel) from ORI to Limited Industrial (LI). Although the written request included the subject site in acreage and description, the mapping exhibit submitted with the application did not. The mapping exhibit submitted with the application followed the PUD/ORI boundary as shown on the zoning map after the zoning map revisions resulting from the 1991 Adamstown Region Plan process.

The Board of County Commissioners voted to approve the request and adopted the maps prepared by staff. The 2001 Zoning Map reflecting the comprehensive rezoning in the Adamstown Region, however, appears to depict PUD zoning extending into the Russell property beyond the HOA parcel. The line demarcating PUD appears to follow part of an unnamed extension of Lime Branch, which may have been confused with a property line. There are numerous erasures on the mylar version of the 2001 zoning map, which presents the possibility that the demarcation line of PUD may have been drawn where the

marker would adhere to the surface of the medium. The PUD boundary line is drawn in marker, unlike others which appear to have been applied with mylar tape. The Board notes that at the time of the 2001 Adamstown Region Plan process, County zoning and land use maps were hand drawn and did not have the benefit of utilizing Geographic Information Systems (GIS).

Staff of the Frederick County Division of Planning recommended approval of the request for LI zoning. The Frederick County Planning Commission also recommended approval of the requested LI zoning.

Based on all the evidence submitted in this case, the Board makes the following specific findings of fact (in addition to the findings above) on each of the matters mentioned in Maryland Code Annotated, Article 66B, Section 4.05(a):

1. POPULATION CHANGE:

There is no residential component proposed in connection with the requested rezoning. As a result, there will be no increase in population if the requested rezoning is granted.

2. AVAILABILITY OF PUBLIC FACILITIES:

A. SCHOOLS

The requested rezoning to Limited Industrial would not impact school enrollment.

B. FIRE AND RESCUE SERVICES

The subject property is served by Westview Station No. 31 (United Steam Fire Company No. 3), which is located approximately 2 miles from the site. Emergency services would also be available from Carroll Manor Volunteer Fire Company, located in the community of Adamstown.

C. POLICE SERVICE

Police protection will be provided by the Frederick County Sheriff's Office and the Maryland State Police.

D. LIBRARIES

The proposed rezoning would have no direct impact on library facilities.

E. WATER AND SEWER

The subject site is classified as W-1/S-1, indicating existing water and sewer service. The Adamstown Planning Region is served with treated water from the New Design Water Treatment Plant, which has a capacity of 6.6 million gallons per day. Wastewater is treated at the Ballenger Creek Wastewater Treatment Plant, which currently has limited remaining capacity. Phase I of the McKinney Wastewater Treatment Plant will supply the surrounding area with 6 million gallons per day of wastewater treatment capacity.

3. PRESENT AND FUTURE TRANSPORTATION PATTERNS:

A. EXISTING SITE ACCESS CHARACTERISTICS

The subject property is situated entirely within the Russell property on the west side of MD Route 85, one-quarter mile south of Executive Way. Currently, the site has access from Conestoga Trail, which bisects the Countryside PUD. There is no improved road access to the site.

B. EXISTING AND PROPOSED TRAFFIC VOLUMES OF MAJOR ROADS IN THE VICINITY

Traffic counts conducted by the Maryland State Highway Administration in 2005 indicate the following levels of vehicular traffic on major roads in the vicinity of the subject property:

English Muffin Way, 0.1 miles west of MD 85: 8,325 average annual daily traffic (AADT)

MD Route 85, 0.1 miles north of English Muffin Way:
15,625 AADT

C. **COMPREHENSIVE PLAN DESIGNATIONS OF MAJOR
ROADS IN VICINITY**

English Muffin Way is designated a Major Arterial in the Adamstown Region Plan. Maryland Route 85 is designated a Major Arterial up to the entrance to the Countryside PUD, at which point it is designated a Minor Arterial south toward Buckeystown. New Design Road, which runs parallel to MD Route 85, is also designated a Major Arterial in the Adamstown Region Plan.

D. **PLANNED IMPROVEMENTS**

The Adamstown Region Plan references a need for multi-lane reconstruction of MD Route 85 from Spectrum Drive south to English Muffin Way. Improvements to MD 85 from north of Grove Road to south of English Muffin Way are currently under design by the Maryland State Highway Administration.

There are no transportation improvements to the subject property proposed by the applicant. The applicant has provided plans for the proposed transportation network related to the overall Russell Property through site and subdivision applications submitted to the Division of Permitting and Development Review.

The Board finds that the proposed LI zoning would generally have little impact on the existing transportation system.

4. **COMPATIBILITY WITH EXISTING AND PROPOSED
DEVELOPMENT FOR THE AREA:**

A. **EXISTING LAND USES IN THE NEIGHBORHOOD**

The Russell Property is surrounded on three sides by limited industrial and office/research land uses. The Wedgewood Business Park is situated to the south and west of the site and the Westview South MXD lies north of the subject property.

To the southeast of the site is a small area of residential development (the 35 acre Countryside PUD) and the Arcadia Mansion, a National Register historical site. To the east of the property is MD Route 85.

B. SUBDIVISION ACTIVITY

The development of the Countryside PUD occurred in the 1970's. There is no other residential activity adjacent to the subject property.

C. LAND PRESERVATION ACTIVITY

There is no agricultural or land preservation activity adjacent to or nearby the subject property.

D. CULTURAL RESOURCES

The Arcadia Mansion Farm, located on MD Route 85, is adjacent to the Russell Property. This property, listed on the National Register, includes a farmhouse circa 1790, bank barn, carriage house, and wagon shed/corn crib. The bank barn and wagon shed are not within the boundary of the National Register listing; however, the wagon shed will be relocated within the National Register boundary as part of the site plan approval for the overall Russell Property.

5. RECOMMENDATION OF THE FREDERICK COUNTY PLANNING COMMISSION:

The Frederick County Planning Commission recommended approval of the requested LI zoning.

6. RELATIONSHIP OF THE PROPOSED AMENDMENT TO THE FREDERICK COUNTY COMPREHENSIVE PLAN:

The subject site is designated for Medium Density Residential land use in the 2001 update to the Adamstown Region Plan, together with the Countryside PUD and HOA buffer parcel. The remainder of the Russell Property is designated Limited Industrial as is the majority of adjacent land. Within the vicinity of the subject property are General Commercial, Institutional, Office/Research and Resource Conservation land uses.

Based on all the evidence submitted in this matter, the Board of County Commissioners finds that a mistake has been made in the existing zoning classification (PUD) which has been applied to the property.

There have been a number of mistakes relating to the current zoning maps of the subject property since 1988. The initial mistake was the omission by the Maryland State Department of Assessments and Taxation of the Countryside HOA buffer parcel, which was a condition of Rezoning Case No. R-88-31. After this parcel was recorded, it was not incorporated into future tax maps produced by SDAT.

When staff amended the Zoning Map during the 1991 Adamstown Region Plan update, an incorrect zoning line was delineated since the parcel layer was omitted. At this point, PUD zoning was incorrectly delineated on the subject property over the parcel's ORI rezoning.

At the time of the Adamstown Region Plan update in 2001, it appears that the official Zoning Map inaccurately reflected the zoning boundary to run along an unnamed tributary of Lime Branch, rather than a property line. The board finds that the inaccuracy of the official Zoning Map was a material fact not known to the Board at the time of rezoning. This mistake results from the fact that in 2001 the official Zoning Map was hand drawn on mylar material. Over time, due to piecemeal rezonings, the ink lines on the mylar map were erased and redrawn so that the mylar material was abraded away. It appears that zoning lines were, of necessity, drawn on the nearest mylar material which would retain ink.

In sum, the Board finds that there was mistake in the PUD zoning of the land at issue. The Board further finds that rezoning of the land at issue will correct that mistake.

ORDINANCE

BE IT ENACTED AND ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF FREDERICK COUNTY, MARYLAND, that for the reasons set forth above, Rezoning Case No. R-06-06 is hereby **GRANTED** for the reclassification of 5.6995 acres of land, more or less, from the Planned Unit Development (PUD) zone to the Limited Industrial (LI) zoning district.

AND BE IT FURTHER ENACTED AND ORDAINED BY THE BOARD, that the Zoning Administrator is hereby authorized and directed to make the appropriate change on the Zoning Map showing this reclassification.

The undersigned hereby certify that this Ordinance was approved and adopted on the 26th day of June, 2007.

BOARD OF COUNTY COMMISSIONERS
OF FREDERICK COUNTY, MARYLAND

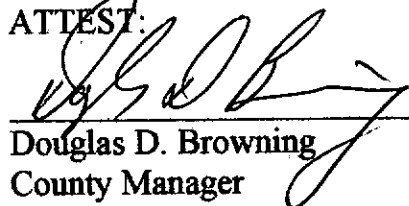
By: Jan H. Gardner
Jan H. Gardner, President

David P. Gray
David P. Gray, Vice President

Kai J. Hagen
Kai J. Hagen

[Signatures continued on next page.]

ATTEST:


Douglas D. Browning
County Manager


Charles A. Jenkins

Commissioner John L. Thompson, Jr. voted against the proposed
reclassification.